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Order 00-7-4



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 6th day of July, 2000

Complaint of

**Louise M. Caplan v. Continental
Airlines, Inc.**

Under 49 U.S.C. § 41705

Served July 6, 2000

OST Docket 2000-7009 - 6

ORDER OF DISMISSAL

On March 3, 2000, Louise Caplan (Ms. Caplan or Complainant) filed a third-party complaint under section 302.201 of the Department's Procedural Regulations (14 CFR 302.201) against Continental Airlines, Inc. (Continental). The complaint alleged that Continental unlawfully discriminated against the complainant on the basis of her disability, in violation of the Air Carrier Access Act of 1986, 49 U.S.C. §41705, (ACAA) and the Department's implementing regulations, 14 CFR Part 382. In her complaint, Ms. Caplan alleged that the carrier failed to provide adequate wheelchair assistance during her travel on a Continental flight in October 1999. The complainant alleges that the carrier "deliberately and improperly" marked its service request form to indicate that the passenger requested an electric cart rather than a wheelchair and failed, when the passenger arrived at Houston and requested assistance in making a connecting flight, to provide wheelchair assistance promptly.

Continental on March 29, 2000, filed an answer in which it disputed many of the complainant's factual claims. Moreover, the carrier, denying any intent to violate Part 382, states that if it incorrectly filled out the special services request form to indicate an electric cart rather than a wheelchair, and the mistake was entirely inadvertent. The carrier, furthermore, states that its gate agent at Houston whom Ms. Caplan and her husband confronted with their complaint has received further counseling in responding to the requests of disabled travelers. The carrier claims that its training programs for both Complaint Resolution Officers (CROs) and gate agents have been modified recently to stress greater concern for the needs of the disabled. In a reply to the carrier's answer,

Ms. Caplan claims that since Continental's pleading was not supported by sworn affidavits the factual assertions contained in the document are entitled to no weight. The supplemental pleading also claims that it is unclear from the pleadings whether the gate agent at Houston was in fact a CRO within the meaning of 14 CFR 382.65 and that, if not, then the carrier unlawfully failed to provide a CRO at the time of the incident despite an explicit request that it do so.

We have decided to dismiss the complaint. In Order 2000-3-4, issued March 27, 2000, Administrative Law Judge Kolko formalized a consent agreement we reached on February 18, 2000, with Continental Airlines covering compliance issues similar to those raised in Ms. Caplan's pleadings. The consent order found that the carrier on several occasions had failed to comply with a number of the requirements of Part 382, particularly with respect to providing adequate wheelchair service and providing appropriate and prompt responses to disability complaints made to the airline and its CROs. Ms. Caplan's complaint, moreover, arises from an incident that occurred during the three-year period, beginning in 1997, which was the subject of the recent consent order. The carrier has been directed to cease and desist from similar violations in the future, has taken remedial action with respect to its training program and has paid a civil penalty as prescribed in the consent agreement covering all relevant violations during the period discussed in Order 2000-3-4. For this reason, we believe a new and separate investigation to reexamine essentially similar matters would raise issues of double jeopardy and fairness and would not be in the public interest.

ACCORDINGLY, I dismiss the third-party complaint in this docket.

This order is issued under authority assigned in 14 CFR 302.406(b) and shall be effective as the final action of the Department within 30 days after service.

By:

Samuel Podberesky
Assistant General Counsel for
Aviation Enforcement and Proceedings